

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD

IN THE MATTER OF
RICK and CHERYL SKODA,

Appellants,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

PCHB No. 87-83

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of compliance order DE 87-N200 relative to abandonment of a dug well, came on for formal hearing before the Board on October 8, 1987, in Seattle, Washington. Seated for and as the Board were Lawrence J. Faulk (Presiding), Wick Dufford (Chairman), and Judith A. Bendor. Bibi Carter, court reporter, officially reported the proceedings.

Appellant represented himself. Respondent agency was represented by Assistant Attorney General, Peter R. Anderson.

Witnesses were sworn and testified. Exhibits were admitted and examined. Argument was heard. From the testimony, evidence and contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Appellants are former owners of residential property near Lake
4 Stevens in Snohomish County which contains an old hand dug well. The
5 well is a six foot by six foot square hole approximately 27 to 30 feet
6 deep with a static water level at approximately six feet below the
7 land surface.

8 II

9 The Washington State Department of Ecology (DOE) is an
10 environmental management and regulatory agency empowered to regulate
11 the construction, maintenance and abandonment of water wells under
12 authority of Chapter 18.104 RCW and Chapter 173-160 WAC.

13 III

14 In 1976 the Skodas purchased from the Muzzys the property
15 containing the well in question. At the time of their purchase the
16 top of the well was overlain with a concrete slab with a hole in the
17 center covered by a removable cap. The Skodas, feeling that the
18 arrangement was both dangerous and unaesthetic, decided to change the
19 covering and disguise the well's existence. They broke up the
20 concrete slab covering the well and replaced it with a covering of
21 plywood, beauty bark and dirt. Finally a rhododendron was planted on
22 the dirt covering.

IV

The well was never used by the appellant as a source of water for the residence. In 1986, the appellant sold the property to the Moores.

V

On April 3, 1987, the Department of Ecology received a complaint about the well. Mrs. Moore, while watering the bush planted over the makeshift cover of the well, (in the company of her six year old daughter) had broken through the dirt and fallen part way into the well. She was able to stop herself before actually being immersed in water, but was shaken by the experience. She believed that if her child had fallen into the well, she would have gone into the water, which could be fatal.

On April 6, 1987, the DOE investigated the complaint and confirmed the existence of the well, the facts regarding how it was disguised, and the hole in the plywood through which Mrs. Moore had fallen. After interviewing the Muzzys, the Skodas and the Moores the DOE issued Order No. DE 87-N200 on April 29, 1987, directing it to the Skodas. The Order found that the well is a health and safety hazard and ordered the Skodas to do the following:

Abandon this well in accordance with procedures outlined in WAC 173-160-330, abandonment and destruction of wells (see enclosed copy) within 30 days upon receipt of this order; notify the Department of Ecology when the work is completed.

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(3)

1 VI

2 Appellant received the Order on May 4, 1987, and feeling aggrieved
3 appealed to the Board on June 8, 1987, for relief. The matter became
4 our cause number PCHB 87-83.

5 VII

6 The Skodas do not contest the facts previously recited. Their sole
7 defense is that, since they have sold the property, they do not believe
8 they should be solely responsible for carrying out the proper
9 abandonment of the well.

10 Mrs. Moore has agreed to provide the Skodas access to the property
11 to comply with the Order.

12 VIII

13 Any Conclusion of Law which is deemed a Finding of Fact is hereby
14 adopted as such.

15 From these Findings of Fact the Board comes to these

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over these persons and this matter.
19 Chapters 18.104 and 43.21B.

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II

Under terms of RCW 18.104.040(4) DOE was granted power to adopt rules concerning water wells, including the following:

(b) Methods of sealing artesian wells and water wells to be abandoned or which may contaminate other water resources;

DOE exercised this rulemaking power in adopting Chapter 173-160 WAC. An abandoned well by definition is a well which has been "rendered unproductive." WAC 173-160-030(1). Wells which are abandoned must, under WAC 173-160-290, be abandoned in a manner consistent with DOE's regulations. For dug wells the abandonment requirements are set forth in WAC 173-160-330. That section provides:

Clean chlorinated sand shall be used to fill the bottom of the well to a point 2 feet above static water level. The remainder of the well to land surface shall be filled with clay, concrete or puddled clay. Piping of cementing materials directly to the point of application or placement by means of a dump bailer or tremie is recommended. If concrete, cement grout or neat cement, when used as a sealing material below the static water level in the well, it should be placed from the bottom up by methods that shall avoid segregation or dilution of the material.

III

We conclude that the appellants' actions in covering and disguising the well were acts constituting the abandoning of the well, as that term is used in the regulations. However, these actions clearly failed to conform with the requirements for abandoning dug wells set forth by WAC 173-160-330.

IV

RCW 18.104.060 provides, in pertinent part:

Notwithstanding and in addition to any other powers granted to the Department, whenever it appears to the director, . . . that a person is violating or is about to violate any of the provisions of this chapter, the director, . . . may cause a written regulatory order to be served upon said person . . . The order shall specify the provision of this chapter and if applicable, the rule or regulation adopted pursuant to this chapter alleged to be or about to be violated . . . and shall order the act constituting the violation . . . to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. . . .

V

Pursuant to 18.104.060 the issuance of the regulatory order at issue was proper. A rule adopted to implement the underlying statute is being violated and the case is appropriate for requiring necessary corrective action. The 30 day time period specified is reasonable.

VI

We further conclude that appellants' actions in this case make them proper parties to whom to issue the regulatory order. It was their activity which created the health and safety hazard DOE seeks to eliminate.

Appellants argue that part of the responsibility for properly abandoning the well should also be born the current landowner.

In the exercise of prosecutorial discretion, the DOE did not choose to issue an order to the current property owner. We do not read the regulation as requiring it to do so.

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VII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

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(7)

ORDER

The regulatory order, DE 87-N200 is AFFIRMED.

DONE this 6th day of November, 1987.

POLLUTION CONTROL HEARINGS BOARD

 11/6/87
LAWRENCE S. FAULK, Presiding


WICK DUFFORD, Chairman


JUDITH A. BENDOR, Member

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